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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/916,607	07/26/2001	Rodney D. Cambridge	NAIIP312/01.048.02	8717
28875	7590	03/26/2009		
Zilka-Kotab, PC P.O. BOX 721120 SAN JOSE, CA 95172-1120			EXAMINER PYZOCHA, MICHAEL J	
			ART UNIT 2437	PAPER NUMBER
			NOTIFICATION DATE 03/26/2009	DELIVERY MODE ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RODNEY D. CAMBRIDGE

Appeal 2008-2054
Application 09/916,607
Technology Center 2100

Decided:¹ March 24, 2009

Before JAMES D. THOMAS, HOWARD B. BLANKENSHIP, and
JEAN R. HOMERE, *Administrative Patent Judges*.

THOMAS, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's twice rejection of claims 1, 3, 5, 6, 10, 14 through 16, 19, 20, 24 through 26, 29, 31, and 33 through 38. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Invention

The disclosed invention relates to providing security to Bluetooth-enabled devices and WiFi-enabled devices that employ a control unit and a device. They operate within an associated communications range such that they determine when the device is within the range of the communications of the control unit. When it is determined that the device is within the range of the communications of the control unit, the device is allowed to remain functional and, on the other hand, when it is determined that the device is not within the communications range of the control unit, the device is rendered to be substantially non-functional. (Figures 1, 2, and 6; Spec. 31, Abstract).

Representative Claim

1. A handheld security system, comprising:
 - a Bluetooth-enabled control unit having a range of communications;
 - and
 - a Bluetooth-enabled device, wherein the device is registered with the control unit such that the device cooperates with the control unit using Bluetooth communications to determine when the device is within the range of communications of the control unit, wherein when it is determined that

the device is within the range of communications of the control unit, the device is functional, and when it is determined that the device is not within the range of communications of the control unit, the device is at least partially non-functional;

wherein the device is configured to periodically send an identifying signal to the control unit and the control unit is configured to send a return signal to the device when the identifying signal is received by the control unit;

wherein when the device is at least partially non-functional in a situation where it is determined that the device is not within the range of communications of the control unit, the device is configured to continue periodically sending the identifying signal to the control unit;

wherein the control unit is configured to produce an alert when it is determined that the device is not within the range of communications of the control unit;

wherein the control unit includes a control unit display, the control unit display being configured to display information associated with the device when it is determined that the device is not within the range of communications of the control unit;

wherein the device includes a device display, the device display being configured to display information associated with the control unit when it is determined that the device is not within range of communications of the control unit;

wherein the device is configured to periodically send the identifying signal utilizing a period of time which is configured based on movements of an owner.

Prior Art and Examiner's Rejections

The Examiner relies upon the following references as evidence of unpatentability:

Lenz	2001/0053947 A1	Dec. 20, 2001 (filed Dec. 15, 2000)
Parker	2002/0078393 A1	Jun. 20, 2002 (filed Dec. 19, 2000)
Doub	6,594,762 B1	Jul. 15, 2003 (filed May 5, 1999)
Lunsford	6,614,350 B1	Sep. 2, 2003 (filed Nov. 8, 2000)
Logan	6,631,271 B1	Oct. 7, 2003 (filed Aug. 29, 2000)

All claims on appeal, claims 1, 3, 5, 6, 10, 14 through 16, 19, 20, 24 through 26, 29, 31, and 33 through 38, stand rejected under 35 U.S.C. § 103. In a first stated rejection, as to claims 1, 3, 5, 6, 10, 15, 16, 19, 20, 25, 26, and 34 through 38, the Examiner relies upon Doub in view of Lunsford, further in view of Logan. In a second stated rejection, the Examiner relies upon this initial combination of references, further in view of Parker as to claims 14 and 24. In a third and last stated rejection of claims 29, 31, and 33, the Examiner relies upon the initial combination of references, further in view of Lenz.

Claim Groupings

With respect to independent claims 1, 10, 16, 20, and 26, pages 15 through 19 of the principal Brief argue the features collectively with respect to representative independent claim 1 as representative of them all. Additionally, within this first stated rejection, pages 19 through 21 present

arguments as to dependent claim 6 separately. Page 21 of the Brief does not separately argue the second stated rejection, but in turn relies upon the patentability thereof based on the arguments presented as to the first stated rejection. Lastly, as to the third stated rejection, the arguments presented at pages 21 through 26 of the principal Brief repeat the same arguments as those set forth with respect to the first stated rejection.

The Reply Brief improperly repeats all of the same arguments presented in the principal Brief on appeal and presents brief arguments with respect to the Examiner's responsive arguments set forth in the Answer. As in the principal Brief, the Reply Brief repeats the patentability of the second stated rejection based upon the arguments presented as to the first stated rejection, and the arguments in the Reply Brief also repeat the same arguments set forth in the Brief with respect to the first stated rejection. The principal Brief and Reply Brief do not mention, let alone argue, the Examiner's reliance upon Lenz in the third stated rejection and present no arguments as to its combinability with Doub, Lunsford, and Logan.

ISSUE

In view of the findings made under the topic "Claim Groupings," has Appellant shown that the Examiner erred in finding that the combination of Doub and Lunsford, further in view of Logan, teaches the subject matter of representative independent claim 1 on appeal?

FINDINGS OF FACT

These findings of fact are presented merely to expand upon the actual findings of fact from the respective references actually made by the Examiner in the Answer:

1. As set forth at column 1 in the Background of the Invention of Doub, his invention relates to portable devices to improve security of the respective systems to prevent unauthorized users from accessing them. Although Doub does not explicitly teach the use of so-called Bluetooth or WiFi (claim 29) enabled communication dialogs, the use of such would have been apparent to the artisan within the teachings of Lunsford and Logan, which extensively discuss Bluetooth embodiments and suggest WiFi embodiments (*infra*). Still, the Abstract of Doub teaches “[a]n electronic device and a remote device cooperate to enable a display of an electronic device when a distance between the electronic device and the remote device is less than a transmit range and to disable the display when the distance is greater than the transmit range.” *See* Figure 1. This loss of proximity of the respective devices leads to the absence of a display or the disablement of the display, which disablement of the display in turn is a form of display to the user. The dialogs shown in Figures 3 and 5 relate to transmission and reply signals. The absence of a responsive signal is monitored by the time-out counter 225 in Figure 2, the operation of which is shown in Figure 3.

2. As pointed out by the Examiner, Lunsford has extensive teachings of the use of Bluetooth operating environments throughout its entire disclosure. Additionally, the initial teachings in the Background of the Invention of Lunsford relating to Bluetooth also make reference to corresponding teachings of WiFi at columns 1, lines 37 through 50, which

also make reference to the I.E.E.E. 802.11a and 802.11b protocols which are identical to those relied upon by Appellant's Specification at page 22, lines 20 through 25, for the WiFi embodiment in independent claim 29.

3. Lunsford's security web is provided by Bluetooth protocols such that each of plural devices within his security web may act separately in time as both a device and a control unit to the extent recited in independent claim 1 on appeal, as initially revealed in the Abstract of this patent. Upon the determination of the so-called non-authorized loss of proximity of any device on the web with respect to any other device on Lunsford's security web, any one of the devices may initiate a so-called event, as taught at column 2, line 63 through column 3, line 16; column 6, line 65 through column 7; and column 8, lines 38 through 49. Such a loss of proximity yields alarm displays and the respective deactivation or non-functionality (as claimed) of any device that respectively does not continue the dialog of identification signals with respect to each other device in the security web at regular time intervals. This dialog occurs with respect to at least two devices as illustrated in Figures 1a, 1b, and plural devices as illustrated in Figures 2 through 4. The actual dialogs are illustrated in Flow Chart Figures 6 through 9 in various embodiments with an exclusive embodiment in Figure 10 directed to Bluetooth protocols. These and the Examiner's relied upon locations in Lunsford relate to the time periods or periodicity of polling operations between the respective devices. The absence of polling dialogs between devices within these periods yields a loss of proximity and a lockout of the respective devices with respect to the other devices. Particular Bluetooth time-out teachings are noted at columns 11 and 12.

4. Logan's teachings directly relate to Bluetooth embodiments as do Lunsford's teachings. As initially revealed in Logan's Abstract, his invention discloses a rules-based system for monitoring the movement and relative location of a plurality of electronic devices and performing specified actions, such as issuing notification messages and actuating alarms, when the conditions specified in one or more of the defined rules are satisfied. The Abstract also reveals the security aspect of the programmability of these rules to prevent these devices from being misplaced or forgotten. The rules' definitions are selectively chosen by the user, the discussion of which begins at the middle of column 6, through the end of Logan's patent. The showing in Figure 3 and its corresponding discussion beginning at the middle of column 7 illustrate that the user is permitted the optional selection of certain conditions, including time constraints, such that when the conditions are met, then a missing device or one out of range causes the display of a visual alarm on any chosen device including another device. The discussion at column 7 of Figure 3 characterizes these rules as positional rules or positional conditions.

5. Lenz teaches the corresponding usability of Bluetooth and WiFi technologies at page 2, paragraph [0018].

PRINCIPLES OF LAW

"[T]he PTO gives claims their 'broadest reasonable interpretation.'" *In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004) (quoting *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000)). "Moreover, limitations are not to be read into the claims from the specification." *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (citing *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir.

1989)). Our reviewing court has repeatedly warned against confining the claims to specific embodiments described in the specification. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1323 (Fed. Cir. 2005) (en banc).

One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

Section 103 forbids issuance of a patent when “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.”

KSR Int’l Co. v. Teleflex Inc., 127 S. Ct. 1727, 1734 (2007).

The Supreme Court emphasized “the need for caution in granting a patent based on the combination of elements found in the prior art,” and discussed circumstances in which a patent might be determined to be obvious. *Id.* at 1739 (citing *Graham v. John Deere Co.*, 383 U.S. 1, 12 (1966)). The Court reaffirmed principles based on its precedent that “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *Id.* The operative question in this “functional approach” is thus “whether the improvement is more than the predictable use of prior art elements according to their established functions.” *Id.* at 1740.

We must determine whether or not the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

See id. at 1734. Obviousness determination is not the result of a rigid formula, and we will consider the facts of a case and the common sense of those skilled in the art. *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1161 (Fed. Cir. 2007). That is, the test for obviousness is rather what the combined teachings of the references would have suggested to those of ordinary skill in the art. *See In re Keller*, 642 F.2d 413, 425 (CCPA 1981); *In re Young*, 927 F.2d 588, 591 (Fed. Cir. 1991).

ANALYSIS

The reader is directed to understand the duplication of the arguments with respect to the first and third rejections in both the principal Brief and the Reply Brief as noted in our earlier discussion of “Claims Groupings” in this Opinion. Moreover, the Brief and Reply Brief incorrectly reference the last Office Action as the Final Rejection issued on August 18, 2006. However, the Examiner issued a Non-Final Office Action, the last Office Action in this application, on January 29, 2007.

The Examiner provides adequate reasoning among the teachings of Lunsford to combine the teachings of Lunsford with those in Doub and of those in Logan to combine Logan’s teachings with those in Lunsford and Doub. There are believed to be consistent with the requirements of the Supreme Court since the Court indicates, as reproduced earlier, that the combination of familiar elements according to known methods would likely render the invention obvious when it does no more than yield predictable results utilizing the functional approach of combinability.

In this light, the Examiner has adequately addressed Appellant’s arguments in the Brief and Reply Brief that the combination of Lunsford and

Doub would have nullified Doub to make it unsatisfactory for its intended purpose. On the contrary, the artisan would have combined, according to the above-noted case law, the teachings rather than the structural elements of the respective references of Doub and Lunsford in such a manner as to enhance the operability of Doub's system with the expanding teachings from Lunsford in the same environment of use as Doub. Rather than limiting the teachings of Doub to a single control unit that is operable within a respective device as argued by Appellant in the Brief and Reply Brief, the expanding teachings of Lunsford would have permitted any given device to act as a device as well as a respective control unit to the other devices within Lunsford's security net. With respect to the combinability of Doub and Lunsford, Findings of Fact 1 through 3 clearly further support the Examiner's reasons of combinability within the guidance provided by the above-noted case law, in addition to the findings already made by the Examiner in the Answer with respect to the teachings of both of these references.

These Findings of Fact also clearly address the allegation of the absence of the respective control unit display and device displays recited at the end of representative claim 1 on appeal, the arguments of which are repeatedly made in the Brief and Reply Brief. Additionally, Finding of Fact 4 with respect to Logan also plainly indicates that it was well known in the art for a user to choose any respective device to conditionally display a loss of proximity to any other device or the same device by means of the condition dialog setup box in Figure 3 of Logan.

Appellant's last argument with respect to the first stated rejection appears to relate to the limitation at the end of claim 1 reciting "wherein the

device is configured to periodically send the identifying signal utilizing a period of time which is configured based on movements of an owner.” Each of the three references to Doub, Lunsford, and Logan appear to be directly concerned with identifying when a loss of proximity has occurred between plural devices operating within a protocol environment that requires periodic dialogs there between. Thus, each reference relates indirectly to the broadly recited mobility of the user/owner of a given device. Moreover, we agree with the Examiner’s observations in the paragraph bridging pages 12 and 13 of the Answer where the Examiner makes references to corresponding teachings in Doub and Lunsford relating to the respective teachings of periodically sending identification signals utilizing a given period of time. These are buttressed by our Findings of Fact 1 through 4.

With respect to the arguments directed to dependent claim 6, this claim recites that, within the security system of claim 1, “wherein the device is exclusively registered with the control unit.” The Examiner correctly points out at page 14 of the Answer that Appellant has already argued/admitted that the teachings in Doub directly relate to devices that are only registered with the single control unit by pointing to page 16 of the principal Brief on appeal. As the Examiner has pointed out and we have noted in Finding of Fact 3, Lunsford teaches embodiments where there is a dialog exclusively between two devices as well as where the dialog occurs between a plurality of devices greater than two, where each may function separately in time as a device as well as a respective control unit to each other. Therefore, even in the embodiments in Lunsford that utilize more than two devices, at any point in time when one device is operating as a

device, it operates exclusively with respect to any other device that functions as a control unit at that moment of the dialog.

The third stated rejection includes independent claim 29 which recites features relating to WiFi protocols in contrast to all other independent claims in the first stated rejection that relate to Bluetooth embodiments. Finding of Fact 5 relates correspondingly and identically the teachings of Bluetooth and WiFi as being interchangeable. *See* Finding of Fact 2 with respect to corresponding teachings in Lunsford.

CONCLUSIONS OF LAW

Appellant has not shown that the Examiner erred in finding that the combination of Doub and Lunsford, further in view of Logan, teaches the subject matter of representative independent claim 1 on appeal.

Since the dependent claims within the first stated rejection are not argued other than claim 6 which the Examiner and we have addressed, they fall with representative independent claim 1 on appeal. Correspondingly, the dependent claims within the second stated rejection are not argued to be patentable and fall with our consideration of representative independent claim 1 on appeal. Since the features of independent claim 29 within the third stated rejection are argued identically to those presented with respect the first stated rejection and representative independent claim 1 on appeal, it as well as the dependent claims in this third stated rejection also fall.

DECISION

The Examiner's three separately stated rejections under 35 U.S.C. § 103 of claims 1, 3, 5, 6, 10, 14 through 16, 19, 20, 24 through 26, 29, 31, and 33 through 38 are affirmed. All claims on appeal are unpatentable.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

msc

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